

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

PLAINTIFF,

-VERSUS-

SECOND AMENDED  
COMPLAINT

CIVIL ACTION  
CASE NO.:

6:16-CV-06206

JURY TRIAL DEMANDED

CHAD BESCLER, Correction Officer,

JEFFERY CLAFLIN, Sergeant,

A. COLES, Correction Officer,

HARKNESS, AKA "TINY" Correction Officer,

TIMOTHY PERRY, Correction Officer,

B. SCHIEBER, Correction Officer,

DEFENDANTS.

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PLEASE TAKE NOTICE,  
that enclosed is an original caption  
second amended complaint Filed in this  
action as a matter OF course, adding  
one Harkness Also Known as "Tiny"  
correction OFFicer and adding new  
counts, pursuant to Rule 15(a),  
Federal Rules OF Civil Procedure.

Plaintiff States ;

JURISDICTION AND VENUE



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1. That plaintiff institutes these proceedings and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. Section 1344 to obtain the costs of suit, including reasonable attorney fee, and damages suffered by plaintiff and caused by defendants' violation of his rights guaranteed in the Eighth and Fourteenth Amendments to the Constitution

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OF the United States and by Federal law,  
particularly 42 U.S.C. section 1983.

2. That this Court also  
has jurisdiction of this action under  
28 U.S.C. section 1331, in controversy  
arises under the First, Fourth, Eighth,  
and Fourteenth Amendments of the  
constitution of the United States.

3. That the violation  
of plaintiff's rights was committed  
within New York State.



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## PARTIES

4, That plaintiff Darrell Gunn, D.I.N. 03-B-2443 is a citizen OF the United States OF America and was at all times relevant herein a prisoner OF New York State Department OF Corrections and Community Supervision, incarcerated at the Elmira Correctional Facility, P.O. Box 500, Elmira, New York 14902.

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5. That defendant

JEFFERY CLAFLIN, Sergeant was at all times relevant herein a duly appointed, qualified and acting Sergeant of the Elmira Correctional Facility, and at all times relevant herein was resident of Chemung County, Elmira, New York.

6. That defendant CHAD

BESCLER, Correction Officer was at



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all times relevant herein a duly appointed, qualified and acting Corrections Officer of the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung County, Elmira, New York.

7. That A. COLES, Correction Officer, was at all times relevant herein a duly appointed, qualified and acting Corrections Officer



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OF the Elmira Correctional Facility, and  
at all times relevant herein was a  
resident of Chemung County, Elmira, Elmira,  
New York.

8. That defendant HARKNESS  
Also known as "TINY" Correction Officer, was  
at all times relevant herein a duly  
appointed, qualified and acting Corrections  
Officer OF the Elmira Correctional Facility,  
and at all times relevant herein was a  
resident of Chemung County, Elmira, New York.



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9. That defendant TIMOTHY PERRY, CORRECTION OFFICER, was at all times relevant herein a duly appointed, qualified and acting CORRECTIONS OFFICER OF the Elmira Correctional Facility, and at all times relevant herein was a resident of Chemung county, Elmira, New York.

10. That defendant B. SCHIEBER, CORRECTION OFFICER, was at all times relevant herein a duly appointed,

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qualified and acting corrections officer  
of the Elmira Correctional Facility,  
and at all times relevant herein was  
a resident of Chemung County, Elmira,  
New York.

11. That defendants CHAD  
BESLER, Correction Officer, JEFFERY  
CLAFLIN, Sergeant, A. COLES, Correction  
Officer, HARKNESS ALSO KNOWN as "TINY"  
Correction Officer, TIMOTHY PERRY,



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Correction Officer and B. SCHIEBER, Correction Officer are sued individually. Relief is sought against each defendant as well their agents, assistants, successor, employees, and persons acting in concert or cooperation with them or at their direction or under their supervision.

12. That at all relevant herein, the defendants CHAD BESLER,

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Correction Officer, JEFFERY CLAFLIN, Sergeant,  
A. COLES, Correction Officer, HARKNESS ALSO  
Known as "TINY" Correction Officer, TIMOTHY  
PERRY, Correction Officer, and B. SCHIEBER,  
Correction Officer and their agents, assistants,  
and employees acted pursuant to the  
Policies, regulation or decisions officially  
adopted or promulgated by those in the  
New York State Department of Corrections  
and Community Supervision whose acts



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may fairly be said to represent official policy or were pursuant to governmental custom of the New York Department of Corrections and Community Supervision.

13, That at all times relevant herein, defendants have acted under the color of authority of the law of New York State or in active concert with such defendants who are so acting.

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## PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuit in State or Federal Court dealing with these same facts involved in this action?

YES.

1. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: State of New York (T. PERRY, <sup>CORRECTION</sup> OFFICER)

2. COURT: STATE OF NEW YORK COURT OF CLAIMS



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3. Claim No. 124108

4. The approximate date the action was Filed:

April 9, 2014.

5. Name of Judge whom case was assigned.

Hon. Catherine C. Schaewe, J.

6. Disposition (consolidated) dismissed

7. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B2443

Defendant: STATE OF NEW YORK (JEFFERY LAFLIN)  
Sergeant

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8. COURT: STATE OF NEW YORK COURT OF CLAIMS

9. Claim No. 124149

10. The approximate date the action was filed:

April 16, 2014.

11. Name of Judge whom case was assigned

Hon. Catherine C. Schaewe, J.

12. Disposition: (consolidated) dismissed.

13. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: STATE OF NEW YORK (~~CHABESLER~~,  
Correction Officer)



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14. COURT: STATE OF NEW YORK COURT OF CLAIMS

15. Claim NO. 125097

16. The approximate date the action was Filed:

October 24, 2014.

17. Name of Judge whom case was assigned.

Hon. Catherine C. Schaeve, J.

18. Disposition: (consolidated) dismissed.

19. Name(s) of the parties to this other lawsuit:

Plaintiff: DARRELL GUNN 03-B-2443

Defendant: STATE OF NEW YORK (CHAD BESCLER  
AND TIMOTHY PERRY)

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20. COURT: STATE OF NEW YORK COURT OF CLAIMS

21. Claim NO. 124009

22. The approximate date the action was Filed:

March 24, 2014.

23. Name of Judge whom case was assigned.

Hon. Catherine C. Schaewe, J.

24. Disposition: (consolidated) Dismissed.

B. Have you begun any other lawsuits in Federal court which relate to your imprisonment?

NO.



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COUNT ONE

25. That on March 29, 2013 plaintiff was enroute to recreation location - Gymnasium at approximately 7:00 p.m. in the G-Block Pivot, Main Hall-Laundry Corridor.

26. That plaintiff turned right walking through magnetometer on the left side of Corridor -- compulsorily for all prisoners to walk through enroute to recreation location.

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27. That meanwhile, CHAD BESCLER, correction OFFicer was standing at magnetometer. Also, TIMOTHY PERRY, correction OFFicer was standing off to right and near the wall on right side of corridor and at the end of magnetometer.

28. That in addition JEFFERY CLAFLIN, Sergeant was standing near TIMOTHY PERRY, correction OFFicer.

29. That simultaneously, without any detection, alarm, and



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or signal plaintiff exited magnetometer.

30. That here TIMOTHY PERRY, Correction Officer signaled plaintiff for a needless pat frisk without giving plaintiff a reason per New York State Department of Corrections and Community Supervision (hereinafter DOCCS) Departmental Directive #4910 section B-2-a (4), (5).

31. That indeed plaintiff placed both his hands on wall, in so doing,

T. PERRY, Correction Officer ordered

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plaintiff to step back back further.

Plaintiff complied.

32. That hereupon C.O. T.

PERRY violently and nefariously Kicked

plaintiff in right foot.

33. That T. PERRY,

Correction Officer brutal and barbaric

actions are contrary to DOCCS Depart-

mental Directive # 4910 section III

Personal Searches, which states in part:



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The employee conducting a personal Search must assure its thoroughness and not to offend the dignity of the inmate being searched.

34. That at that time, plaintiff's right foot began to hurt swell-up. The pain was intense and sharp and throbbing.

35. That TIMOTHY PERRY Correction Officer unprovoked committed battery against plaintiff.

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36. That for this reason, plaintiff immediately stepped back even further. Even so, he was losing his balance.

37. That so now TIMOTHY PERRY, Correction Officer began removing the items from plaintiff's pant pockets, viz., ink pen, ID, phonebook, and handkerchief.

38. That then TIMOTHY PERRY, Correction Officer grabbed plaintiff's underwear boxers and violently pulled up into the groin and rectum. Herewith,



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C.O. PERRY, similarly, repeated, violently pulled plaintiff's pant into his groin and rectum.

39. That needless to say, plaintiff felt horrible pain.

40. That consequently, plaintiff states: "I'm in pain!"

41. That in response, "Shut the fuck-up!" said, TIMOTHY PERRY, Correction Officer.

42. That "you pulled my underwear into my groin area!" Plaintiff's

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Remonstrance was ignored.

43. That meanwhile,

TIMOTHY PERRY, Correction Officer is violently pat Frisking plaintiff, in sum, touching, rubbing, grabbing, and squeezing plaintiff's extremities, chest, genitals, buttocks, and clothes.

44. That as it happens,

TIMOTHY PERRY, Correction Officer violently grabbed plaintiff's genitals -- as a result, plaintiff moved his leg distraughtly. In effect, C.O. PERRY held on to plaintiff



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genitals at the same time stating: "I'm not grabbing you."

45. That hereto, together, as impugnement of plaintiff's remonstrance the incorrigible TIMOTHY PERRY, Correction Officer immediately once again grabbed plaintiff's underwear boxers and violently pulled up, then, repeated again further into his groin and rectum.

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46. That ~~There~~ enough

TIMOTHY PERRY, Correction Officer wantonness and unnecessary infliction of undue hardships caused plaintiff ineffable pain.

A violation of U.S. Constitution Fourth and Eighth Amendment

47. That suddenly plaintiff

looked to the left undoubtedly to see Sergeant JEFFERY CLAFLIN standing, thereabout two feet away witnessing this, whom,



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Condoned and allowed this atrocious behavior.

48. That all things considered, plaintiff's conscience was in shock to see Sgt. CLAFLIN, concomitantly participating in the pat frisk, in effect, intentionally and deliberately using his body to shield/block potential witnesses from observing the pat frisk and sexual assault.

49. That, noting that, TIMOTHY PERRY, Correction Officer ordered

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plaintiff to Face Forward. Plaintiff complied.

50. That, most

critically TIMOTHY PERRY, CORRECTION

Officer still for his sexual gratification

again began to needlessly maliciously and

sadistically and violently rub and touch

and grab and squeeze plaintiff's genitals,

rectum, and buttock maliciously back and

forth, with both his hands at the

same time.



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51. That at that same time, plaintiff stood aghast as C. O. PERRY'S finger penetrated his rectum through plaintiff's clothes, and in so doing, caused plaintiff unwarranted wanton infliction of pain and serious physical injury and psychological trauma and emotional duress, among other things.

A violation of the United States Constitution Eighth Amendment.

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52. That with this in mind, plaintiff felt despair and ineffable pain, and humiliation, anger, degradation, embarrassment, ashamed, insecure, dehumanized, mental anguish, and loss of dignity.

53. That but then, TIMOTHY PERAY, Correction officer removed plaintiff's right sneaker, checked it. CHAN BESCLER, Correction officer assisted, whom, ran a hand held metal-detector wand over the sneaker, whereupon, no alarm or reaction what-so-ever.



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54. That hereto, T. PERRY, Correction Officer used both his hands to check plaintiff Foot.

55. That T. PERRY, Correction Officer, placed the sneaker on the Floor. Telling plaintiff to place his foot back inside. Plaintiff complied.

56. That TIMOTHY PERRY, Correction Officer and CHAD BESCLER, Correction Officer both similarly did plaintiff's left foot as noted above.

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57. That TIMOTHY PERRY, Correction Officer, returned the contents of plaintiff's pockets viz., ink pen, ID, phonebook, and handkerchief.

58. That hereupon, TIMOTHY PERRY, Correction Officer ordered plaintiff, "take it back to your cell."

59. That plaintiff, immediately asked C.O. PERRY, "What is your name?"



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60. That TIMOTHY PERRY, correction officer, in response, "PERRY" -- wherewith in innuendo, "make sure you get it right."

The constitutional basis for this claim under 42 U.S.C. section 1983 is the Fourth Amendment; Eighth Amendment; and Fourteenth Amendment.

61. That the acts of the defendants, and each of them, subjected

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plaintiff to unreasonable search in violation of the Fourth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

62. That the acts of defendants, and each of them subjected plaintiff to cruel and unusual punishment causing plaintiff injuries, including rectum hemorrhoid lasting over six months, soreness, swelling, internal bleeding, burning, discomfort, abrasion, still on-going,



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irritation during bowel movements and to suffer extreme physical pain and mental anguish and humiliation and degradation, depression, stress, loss of sleep, nightmares, anxiety, embarrassment, emotional duress, and anger, a life changing episode, permanently mentally scarred, the Full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff. to suffer damages in the sum of \$ 5,000,000.

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WHEREFORE, plaintiff respectfully prays  
this Court to:

a) permanently enjoin the defendants, their  
assistants, successors, employees, and persons  
acting in concert or cooperation with them  
from further violating the rights, privileges  
and immunities guaranteed to the plaintiff  
under the constitution of the United States  
of America;

b) grant compensatory damages to plaintiff  
in the sum of \$ 5,250,000;



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c) grant punitive damages to plaintiff in the sum of \$10,000,000;

d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For this Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL-40777-13--Title--

~~SEXUALLY VIOLATED~~ PAT FRISK dated

April 11, 2013. superintendent denied

grievance. On appeal Central Office

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Review Committee (hereinafter CORC) did grant  
Grievant's Request Unanimously Accepted In Part.  
Also, this claim is not a prison condition. No  
Exhaustion requirement is needed.

## COUNT TWO

63. That plaintiff adopts by  
reference paragraphs 1 through 20.

64. That plaintiff searched  
for witnesses as plaintiff's mind was  
inundated with fear, pain, and humiliation,



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only to see JEFFERY CLAFLIN standing there with his hat on.

65. That here, JEFFERY CLAFLIN, Sergeant, area supervisor deliberate indifference to plaintiff's risk to serious harm was lucid by showing personal involvement, that is, participating, using his body to block/shield the pat frisk - sexual assault to any potential witnesses.

66. That certainly Sgt.

JEFFERY CLAFLIN neglect of duty

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was a Failure to protect plaintiff's undue hardship ascribed from C.O. PERRY wanton infliction of pain and malicious and sadistic behavior.

67. That overall Sgt. JEFFERY CLAFLIN Ignored plaintiff's statement: "I'm in pain!" During a non-emergency, non-threatening, suspicionless, clothed body pat Frisk that was conducted abusively and without a good-faith effort.



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68. That in this way, Sgt. JEFFERY CLAFLIN as area supervisor directly became involved and failed to act, to protect or prevent by disregarding excessive serious risk to plaintiff's health and safety together with grossly negligent in supervising subordinate TIMOTHY PERRY, correction officer, whom sexually assaulted claimant.

The constitutional basis for this claim under 42 U.S.C. section 1983 is the Eighth Amendment and Fourteenth Amendment.

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69. That the acts of defendant's and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

70. That the acts of the defendants, and each of them, subjected plaintiff to substantial risk of serious harm-- causing plaintiff physical pain and injury, viz., rectum, hemorrhoid, soreness, swelling



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intenal bleeding, burning, discomfort, abrasion,  
Still on-going irritation during bowel movements,  
Stomach Knots, loss of appetite, nervousness,  
loss of self-esteem, irritability, and Fre-  
quent headaches, including traumatic psycho-  
logical injury, emotional duress, and anger,  
a life changing episode, permanently  
Scarred, I cannot live a normal life any-  
more the Full extent of which cannot be  
measured in violation of the Eighth and  
Fourteenth Amendments of the United

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States Constitution and caused plaintiff to suffer damages in the sum of \$250,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) Permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;



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- b) grant compensatory damages to plaintiff in the sum of \$ 1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$ 5,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For This Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL-40777-13--Title--

~~SEXUALLY VIOLATED~~ VIA PAT FRISK dated

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14, 2013. Superintendent denied the grievance.

On appeal CORC did grant Grievant's Request  
Unanimously Accepted In Part.

Also, this claim is not a prison  
condition. No exhaustion is needed.

## COUNT THREE

71. That plaintiff adopts by  
reference paragraphs 1 through 20.

72. That now, plaintiff heads  
back to his cell.



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73. That at this time, while plaintiff was enroute to his cell, CHAD BESCLER, Correction officer, immediately without justification, wearing black boots - inimically and malevolently kicked plaintiff in the left leg shin. In so doing, practically tripping plaintiff and provoking plaintiff to be brutally assaulted by TIMOTHY PERRY, Correction Officer and Sgt. JEFFERY CLAFLIN who were all still there at the magnetometer.

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74. That CHAD BESCLER, Correction Officer treated plaintiff without dignity, hence, witnessing plaintiff being sexually assaulted. Hereupon, plaintiff became anathema to C.O. BESCLER, as a result, causing intentional physical and emotional harm.

75. That not only that, CHAD BESCLER, correction officer whom witnessing the sexual assault was grossly negligent when he failed to act, to protect or prevent by disregarding excessive risk of



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Serious harm to plaintiff's health and safety.

A violation of United States Constitution  
Fourteenth Amendment.

The Constitutional basis for this claim under  
42 U.S.C. Section 1983 is the Eighth  
Amendment and Fourteenth Amendment.

76. That the acts of the  
defendants, and each of them, subjected plain-  
tiff to a battery in violation of the Eighth

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Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$1,000,000.

77. That the acts of the defendants, and each of them, subjected plaintiff to a failure to protect in violation of the Eighth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

78. That the acts of the defendants, and each of them, subjected



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plaintiff to substantial risk of serious harm--  
causing plaintiff physical pain and injury, viz,  
rectum hemorrhoid, soreness, swelling, internal  
bleeding, burning, discomfort, abrasion, irritation.  
during bowel movements, Stomach Knots, loss  
of appetite, nervousness, loss of self-esteem,  
frequent headaches, including traumatic psych-  
ological injury, emotional duress, anger,  
permanently mentally scarred. Which I cannot  
live a normal life anymore, the full extent  
of cannot be measured in violation of the

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Eighth and Fourteenth Amendment of the United States Constitution and caused plaintiff to suffer damages in the sum of \$1,000,000.

WHEREFORE, plaintiff respectfully prays this court to:

- a) Permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of United States of America;

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b) Grant compensatory damages to plaintiff in the sum of \$1,000,000.

c) Grant punitive damage to plaintiff in the sum of \$2,000,000.

d) Grant plaintiff plaintiff's cost's of this action including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For this Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL-40803-13-- Title--

KICKED AND PROVOKED, dated April 18, 2013.



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Superintendent denied the grievance.

ON appeal CORC did grant Grievant's Request Unanimously Accepted In Part.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

#### COUNT FOUR

79. That plaintiff adopts by reference paragraphs 1 through 20.

80.Th That on April 19, 2013 in the evening plaintiff was let out his G-Block, 5-Company, Cell-20 for a F. SANTIAGO, sergeant grievance complaint EL-40-801-13--ORDERED TO BENCH, investigation interview.

81. That here at G-Block sergeant's office door HARKNESS Also known as "TINY" Correction Officer and another white male unidentified white male prison guard was waiting for plaintiff. "Be careful, he doesn't like pat frisk," said the unidentified prison guard.

82. That hereupon, HARKNESS AKA "TINY", Correction Officer orders plaintiff to place his hands on the wall. Plaintiff. complied.

83. That then during this needless pat frisk HARKNESS, AKA "TINY", Correction Officer for his sexual gratification used his penis through his clothes directly rubbing up against plaintiff's buttocks and legs causing plaintiff to feel the penis of HARKNESS, AKA "TINY", Correction Officer through his clothes.

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84. That HARKNESS, AKA "TINY," Correction Officer sadistic and wanton behavior caused plaintiff unnecessary infliction of incredible hardships, emotional duress, psychological trauma, degradation, and humiliation, among other things.

A violation of United States Constitution Fourth Amendment, Eighth Amendment and Fourteenth Amendment.

85. That when this sexual abuse pat frisk was over. Plaintiff was ordered into sergeant's office. Plaintiff. complied.

86. That then plaintiff sat in chair directly across the desk from sergeant SANTIAGO.

87. That plaintiff was completely in fear, despair and humiliation.

88. That suddenly HARKNESS, AKA "TINY," Correction officer called into Sgt's office through closed door-- "Sgt. do you need help?" a threatening innuendo.

The Constitutional basis for this claim under 42 U.S.C. § 1983 is the Fourth Amendment; Eighth Amendment; and Fourteenth Amendme

89. That the acts of defendant of HARKNESS, AKA "TINY," Correction Officer subjected plaintiff to unjustified pat frisk in violation of the Fourth Amendment of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$250,000.

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90. That the acts of HARKNESS, AKA "TINY," Correction Officer subjected plaintiff to cruel and unusual punishment, sexual abuse, high levels of stress, mental anguish, anxiety, fear, depression, low self-esteem, hopelessness, despair, emotional duress, nightmares, loss of sleep, needless degradation and humiliation, a life changing episode, permanently mentally scarred contrary to legitimate penological interest, correctional goals, and prison policy, procedure, rules and regulations, the full extent of which cannot be measured in violation of the Eighth and Fourteenth Amendments of the United States Constitution and caused plaintiff to suffer damages in the sum of 1,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$500,000;
- c) grant punitive damages to plaintiff in the sum of \$500,000
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.



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Exhaustion of Your Administrative Remedies For  
this Claim:

Plaintiff did not grieve this Claim.

Also, this claim is not a prison condition.

No exhaustion requirement is needed.

## COUNT FIVE

91. That plaintiff adopts by  
reference paragraphs 1 through 20.

92. That on April 22, 2013  
approx. 7 p.m. at G-Block, 5-Company,

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cell-20, A. COLES, correction OFFicer, acting in concert, with deliberate indifference denied plaintiff recreation and stating: "IF you stop being a dick-head you'll come out."

93. That not suprisingly, A. COLES, correction OFFicer to cover-up his wrong doing in grievance complaint investigation submitted False Statements in a pattern of DOCCS culture of corruption and dishonesty.

94. That A. COLE, Correction OFFicer statement to Sgt. SANTIAGO is dated 9-21-13.

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95. That A. COLE, Correction Officer, undisguised disdain for plaintiff created an atmosphere of distrust, disbelief, disrespect, and deceit.

96. That plaintiff Filing grievance complaints against prison guards was exercising his right of Free speech.

97. That consequently plaintiff was unfairly treated differently, hereupon, causing his civil rights being infringed upon.



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A violation of the United States Constitution First Amendment, Eighth Amendment, and Fourteenth Amendment, and Equal Protection Clause.

The constitutional basis for this claim under 42 U.S.C. Section 1983 is the First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause.

98. That the acts of the defendant, subjected plaintiff to undue hardships, denied recreation, which consists

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of telephone, showers, barbershop, among other things, physical pain of headaches, upset digestive tract, nightmares; emotional pain, high levels of stress, anxiety, fear, depression, anger, despair, humiliation, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy procedure, rules and regulations, the full extent which cannot be measured in violation of the First, Eighth, and Fourteenth Amendments of the United States Constitution

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and have caused plaintiff to suffer in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;



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b) grant compensatory damages to plaintiff  
in the sum of \$2,000,000;

c) grant punitive damages to plaintiff  
in the sum of \$2,000,000;

d) grant plaintiff plaintiff's costs of this  
action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies  
For this Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number EL-40868-13-- Title--

NOT BEING LET OUT/RETALIATION dated

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May 2, 2013. Superintendent denied the grievance. On appeal CORC did grant Grievant's Request Unanimously Accepted In Part. Also, this claim is not a prison condition. NO exhaustion requirement is needed.

## COUNT SIX

99. That plaintiff adopts by reference paragraphs 1 through 20.

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100. That on April 26, 2013

A. COLE, Correction Officer, with deliberate indifference denied plaintiff recreation at plaintiff's G-Block, 5-Company, Cell-20.

101. That here A. COLE, Cor-

rection Officer made an invidious and impetent statement: "stop being a dick-head and we'll let you out."

102. That thereafter, on April

30, 2013, A. COLE, Correction Officer,

whom stated: "stop making up lies and you'll



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Come out, " denying plaintiff evening recreation.

103. That A. COLE, Correction Officer to cover-up his wrong doing submitted False statements.

104. That A. COLE, Correction Officer Statement to Sgt. Bynaum is dated 6/4/13.

105. That plaintiff Filing grievance complaints against prison guards was exercising his right OF Free speech.

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106. That A. COLE, Correction OFFicer, undisguised disdain for plaintiff created an atmosphere of distrust, disbelief, disrespect, and deceit.

107. That consequently plaintiff was unfairly treated differently, hereupon causing his civil rights being infringed upon.

A violation of the United States Constitution First Amendment and Eighth Amendment and

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Fourteenth Amendment and Equal Protection clause.

The Constitutional basis for this claim under 42 U.S.C. Section 1983 is the First Amendment and Eighth Amendment and Fourteenth Amendment and Equal Protection Clause.

108. That the acts of the defendants, subjected plaintiff to undue hardships, denied recreation, which consists of telephone, showers, barbershop, among other



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things, physical pain of headaches, upset digestive tract, nightmares; emotional pain, high levels of stress, anxiety, fear, depression, anger, despair, humiliation, and needless degradation contrary to legitimate penological interest, correctional goals, and prison policy procedure, rules and regulations, the full extent which cannot be measured in violation of the First, Eighth, and Fourteenth Amendments, and Equal Protection Clause of the United States of America Constitution and have caused plaintiff to

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Suffer damages in the sum of \$ 2,000,000.

WHEREFORE, plaintiff respectfully prays  
this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

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- b) grant compensatory damages to plaintiff in the sum of \$2,000,000;
- c) grant punitive damages to plaintiff in the sum of \$2,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies For this Claim:

Plaintiff did grieve and appeal this claim. Grievance

Number EL-40880-13 -- Title -- HARASSED

AND DEPRIVED, dated May 7, 2013 Superin-



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tendent gave no decision. On appeal CORC did grant GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART.

Also, this claim is not a prison condition.

No exhaustion requirement is needed.

## COUNT SEVEN

109. That plaintiff adopts by reference paragraphs 1 through 20.

110. That on June 11, 2013

TIMOTHY PERRY, CORRECTION OFFICER, WORKING

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"Center Gate" For his sexual gratification picked plaintiff for a pat. Frisk by ordering plaintiff to the wall, without giving any reason whatsoever, after plaintiff cleared magnetometer without any alarm, detection, and or signal.

111. That plaintiff was en route to recreation location "Field House."

112. That plaintiff handed shower mesh bag to TIMOTHY PERRY, correction officer, and then placed his hands on the wall.

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113. That plaintiff was ordered by TIMOTHY PERRY, Correction Officer to step back. Plaintiff complied.

114. That TIMOTHY PERRY, Correction Officer, removed the contents of plaintiff's pant pockets, viz., ink pen, phonebook, cigarette rolling papers, eye glasses, and handkerchief.

115. That TIMOTHY PERRY, Correction Officer, began rubbing, touching, squeezing and grabbing plaintiff's



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body and clothes during the pat Frisk with his hands.

11b. That and in so doing, forcibly and violently rubbed, touched, grabbed, and squeezed plaintiff's sexual and intimate body parts viz., genitals, penis, scrotum, rectum, and buttocks, with both his hands back and forth. Thus, trying to penetrate plaintiff's rectum intentionally and deliberately, albeit, unsuccessfully.

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117. That plaintiff Felt horrible pain, despair, humiliated, embarrassed, angry, and mental anguish.

118. That plaintiff looked to his right to see Four (4) sergeants in the same area -- thereabout three Feet away.

Also, two prison guards nearby. No one said or did anything.

119. That herewith, TIMOTHY PERRY, Correction Officer, ordered plaintiff to take his property back. Then said,

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"get the Fuck out of here -- hurry up!"

120. That plaintiff

went up to the "Field House" with group;  
feeling humiliation and degradation and pain.

121. That plaintiff

looked for support from inmates. There was  
none. Only ~~a~~acknowledgement.

122. That plaintiff

went to prison guard to report the sexual  
assault where there's a sign-up for

general library.



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123. That this prison guard post is the table near by the magnetometer in the "Field House."

124. That here the prison guard told plaintiff "I don't know what you're talking about."

125. That plaintiff gave prison guard his ID to sign-up for general library.

126. That prison guard stated: "I'm not taking that. You're not going to library! Grieve me!"

127. That plaintiff felt hopeless. Prison guards "Brotherhood" refused to allow plaintiff to report the sexual assault he just experienced minutes ago.

A violation of the United States Constitution First, Eighth and Fourteenth Amendments, Failure to Supervise Clause, and Failure Failure to Protect Clause, and Equal Protection Clause.

The constitutional basis for this Claim under 42 U.S.C. § 1983 is The First Amendment and Eighth Amendment and Fourteenth Amendment Due Process Clause, Equal Protection Clause, Failure to Supervise Clause, and Failure to Protect Clause.

128. That the acts of the defendant TIMOTHY PERRY, subjected the plaintiff to sexual assault of wanton infliction of pain, viz., soreness, swelling, abrasion, discomfort, and mental anguish, and humiliation, degradation, depression, high levels of stress, loss of sleep, nightmares, anxiety, embarrassment, emotional duress, and anger, the full extent of which cannot be measured in violation of the First Amendment, Eighth

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Amendment, Fourteenth Amendment, and Due Process Clause and Equal Protection Clause--Failure to Supervise Clause and Failure to Protect Clause of the United States of America Constitution and have caused plaintiff to suffer damages in the sum of \$4,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights, privileges and immunities guaranteed to the plaintiff under the constitution of the United States of America;
- b) grant compensatory damages to plaintiff in the sum of \$4,000,000;
- c) grant punitive damages to plaintiff in the sum of \$4,000,000;
- d) grant plaintiff plaintiff's costs of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies for this Claim:

Plaintiff did grieve and appeal this Claim. Grievance Number EL-41105-13--Title--SEXUAL ASSAULT WITH FRISK dated June 23, 2013. Superintendent denied grievance. On appeal CORC UNANIMOUSLY DENIED GRIEVANTS REQUEST.

Also, this Claim is not a prison condition. No exhaustion requirement is needed.

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**COUNT EIGHT**

129. That plaintiff adopts by reference paragraphs 1 through 20.

130. That on July 26, 2013, plaintiff was sexually assaulted by B. SCHIEBER, Correction Officer during pat frisk.

131. That plaintiff approximately 3:30 p.m. was en route to "Ball Field" during recreation. Here at "Field House" garage door entrance--magnetometer present was two (2) prison guards and two (2) prison guards near the "Ball Field" entrance. The latter two (2) prison guards was pat frisking prisoners away from the magnetometer.

132. That plaintiff cleared magnetometer without detection and or alarm. Instantly, the other prison guards informed B. SCHIEBER, Correction Officer, "he's the one who writes grievances."

133. That hereupon, B. SCHIEBER, Correction Officer with deliberate indifference picked plaintiff for a needless and unsupervised pat frisk. Thus, C.O. SCHIEBER never gave plaintiff reason for pat frisk.

134. That no area supervising sergeant was present see, New York State DOCCS Departmental Directive No, 4910 § II, III. B. 2 a (4) and (5).

135. That plaintiff complied by emptying his pockets, in so doing, placing his article on the table viz., sunglasses, ink pen, and handkerchief.

136. That then plaintiff placed both hands on



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staircase wall.

137. That hereto, during the pat frisk, B. SCHIEBER placing his hand between plaintiff's buttock touched plaintiff's buttock touched plaintiff rectum with his hand and finger. Hereupon, caused plaintiff to have bowel movement, soreness, and abrasion in the rectum.

138. that unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States of America Constitution Eighth Amendment--Cruel and Unusual Punishment Clause.

139. That concomitantly, B. SCHIEBER, Correction Officer, subsumed in DOCCS arcane "Brotherhood" culture of corruption and dishonesty, with deliberate indifference retaliated

wantonly against plaintiff for filing grievances against other prison guards.

140. That herewith, during the pat Frisk when B. SCHIEBER, Correction Officer told plaintiff "get your things off the table."

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141. That plaintiff picked up his sunglasses, ink pen, and handkerchief. Plaintiff look at B. SCHIEBER name tag.

142. That hereupon, B. SCHIEBER, correction officer, asked plaintiff "what you's looking at?"

143. That in response, plaintiff states, "you!"

144. That in reply, B. SCHIEBER, correction officer, asked "why?"

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145. That plaintiff

responded, "you just touched my asshole!"

What is your name?" He said, "Schieber"

and spelled it out "S-C-H-I-E-B-E-R."

146. That "go back

to your cell," said B. SCHIEBER, cor-

rection officer.

147. That another

prison guard-- white male, standing

in same area, also, doing pat Frisk

States: "lift weights!" as innuendo to



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Plaintiff's protest and complaint of sexual assault, during plaintiff's exiting the pat frisk area and "Field House" entrance.

148. That en route back to plaintiff's cell. He reported the sexual assault to approximately five (5) prison guards standing at "Center Gate" -- one prison guard was named "Williams."

149. That the prison guards asked: "What happened? Why you going back to your cell?"

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150. That "I was just sexually assaulted during a pat Frisk. I don't feel good," in response, said plaintiff.

151. That the prison guards all chimed in except one. They stated: "Don't come out your cell! Be a man! C.O. Williams states: "don't write grievances!"; "Back in the day writing grievances -- you were labeled a rat!," stated another

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Prison guard. They all laughed and berated plaintiff

152. That they ordered to return to his cell. Plaintiff complied.

153. That plaintiff immediately signed-up for sickcall.

154. That thereafter that same evening B. SCHIEBER, Correction took 5-company evening chow list. Plaintiff requested chow and law library 6:30 p.m. callout. In any



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event, plaintiff was not let out.

155. That later while plaintiff was receiving his legal mail he was informed by prison guard "you're keep lock, I do not know why."

156. That in truth, plaintiff received no feed-up tray.

157. That on July 27, 2013, approximately 7:30 p.m. plaintiff received a False document Tier II Misbehavior report authored by B. SCHIEBER,

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Correction Officer in retaliation because plaintiff reported the sexual assault.

158. That the false document Tier II false misbehavior report charged plaintiff with "threats towards staff" and "Failure to follow an order."

159. That unfairly causing plaintiff's civil rights being infringed upon.

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A violation of the United States of America Constitution First Amendment -- Freedom of Speech -- Retaliation Clause.

The constitutional basis for this claim under 42 U.S.C. section 1983 is the First Amendment -- Freedom of Speech clause - Retaliation Clause; and Eighth Amendment - cruel and unusual Punishment clause.



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160. That the acts of defendant B. SCHIEBER, Correction Officer subjected plaintiff to undue hardships, inhumane horrendous pat Frisk, sexual assault, retaliatory False misbehavior report, hopelessness, high levels of stress, low self-esteem, anxiety, Fear, depression, anger, despair, humiliation, and needless degradation, the Full extent of which cannot be measured in violation of the First Amendment-Freedom speech Clause -- Retaliation Clause and Eighth Amendments--

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cruel and Unusual Punishment Clause of the United States Constitution and have caused plaintiff to suffer damages in the sum of \$ 5,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and persons acting in concert or cooperation with them from further violating the rights,



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privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$1,000,000;

c) grant punitive damages to plaintiff in the sum of \$1,000,000;

d) grant plaintiff plaintiff's cost of of this action, including reasonable attorney fees.



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Exhaustion of Your Administrative Remedies  
For this Claim:

Plaintiff did grieve and appeal this claim.

Grievance Number GH-80561-15-Title --

FALSE MBR,

Superintendent denied the grievance.

On appeal CORC Unanimously Denied Grievant's  
Request.

Also, this claim is not a prison condition.

No exhaustion requirement is needed.

COUNT NINE

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161. That plaintiff adopts by reference paragraphs 1 through 20.

162. That plaintiff, at the time, in the months of December 2013 and January 2014, along with C-Block odd/uneven companies 1, 3, 5, 7 were being "Freezed out" as cruel and unusual punishment and retaliation. Including the dates Dec. 16, 24, 30, 31, 2013, and Jan. 23 and 4, 2014.



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163. That plaintiff at this time could not protect himself from the "Polar vortex" brutal cold weather system because the nefarious and incorrigible prison guards refused to close the windows.

164. That unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States of America Constitution Eighth



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Amendment -- cruel and Unusual Punishment clause.

165. That plaintiff was a witness to Mr. Green an inmate whom was locked at C-Block, 1-Company, 2-Cell, unsuccessfully remonstrated to all prison staff to close the windows.

166. That in truth, it was colder inside our prison cells than the temperature outdoors.

167. That prison guards

Page 99

were wearing hats, gloves and coats to protect themselves from the cold.

168. That most critically, because of his protest Mr. Green was brutally assaulted by B. SCHIEBER, correction officer, on January 4, 2014.

169. That on January 10, 2014, plaintiff, whom was en route to law library callout was targeted for a needless pat frisk in



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the main Hallway-- Mess Hall corridor. Here-  
upon, B. SCHIEBER, correction officer with  
deliberate indifference read aloud for  
everyone to hear the content of the legal  
papers.

170. That as a result,  
plaintiff feels insecure and threatened  
not to file legal papers out of fear  
of reprisals and retaliation.

171. That subsequently  
plaintiff out of fear did not prepare and



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File lawsuits in New York State Court of Claims against defendants B. Schieber, Correction Officer, Donely, ORC, among others, defendants that were dismissed with prejudice in this Court.

172. That plaintiff's Family court matter petition was dismissed solely because prison guard Learner refused to give plaintiff his legal mail.

173. That the above-preceding paragraphs nonfrivolous claims

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was both prejudiced and hindered respectively when B. SCHIEBER, Correction Officer read aloud with deliberate indifference for everyone to hear plaintiff's legal papers.

174. That unfairly causing plaintiff's civil rights being infringed upon,

A violation of the United States of

America Constitution First Amendment--  
Harassment clause

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175. That notwithstanding, plaintiff notified Mr. Vern Fonda, Inspector General, in writing a letter dated January 24, 2014 of the situation in C-Block and Mr. Green peril circumstance.

176. That thereafter, on or about January 31, 2014, B. SCHIEBER, correction officer came to plaintiff cell, C-Block, I-company, 5-cell.

177. That B. SCHIEBER, correction officer acting as a homosexual



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for his sexual gratification began making sexual advances toward plaintiff by blowing kisses and calling plaintiff "Cinnamon."

178. That later same evening approximately 8 p.m. B. SCHIEBER, correction officer, came back to plaintiff's cell and stated: "Cinnamon," why didn't you come out tonight? I'll see you tomorrow," herewith, "he's playing like he's sleep." Telling the prison guard in officer's station.

179. That B. SCHIEBER,

Page 105

Correction OFFicer, on February 3, 2014, again  
came to plaintiff's C-Block, I-Company, 5-cell.

180. That here, B.

SCHIEBER, correction OFFicer for his  
sexual gratification and without justification  
used his baton on plaintiff's foot, in so  
doing, to wake-up plaintiff, then began  
with threats and intimidation states: "hey  
Cinnamon, why didn't you come out today?  
When you come out your cell I'm going to  
fuck-you up!" "You little bitch!"

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181. That Shortly thereafter, B. SCHIEBER, Correction Officer with deliberate indifference threw a cup of water on plaintiff while plaintiff was lying down in his cell. Witnessing this, CHAD BESCLER, Correction Officer was with ~~with~~ him began laughing at plaintiff.

182. That plaintiff experienced degradation, humiliation, emotional trauma, psychological trauma, depression, low self-esteem, despair, and was treated without dignity.



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183.

That thereafter,

on February 4, 2014, approx. 12 p. m. plaintiff was interviewed by MR. LOVELACE, Inspector General for DOCCS about B. SCHIEBER, Correction Officer barbaric and brutal unprovoked assault on MR. Green, prisoner, whom was taken to the "Box" after being assaulted.

184.

That this means

that, B. SCHIEBER, Correction Officer, was well aware of the Inspector General investigation and repeated threatened, harassed,

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intimidated and retaliated against plaintiff  
for contacting Inspector General on behalf  
of Mr. Green, among other things, his wanton  
and sadistic behavior.

185. That all things  
considered the above-preceding paragraphs  
unfairly causing plaintiff's civil rights being  
infringed upon,

A violation of the United States Const-  
itution First Amendment, Harassment clause --

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Retaliation Clause; and Eighth Amendment--  
Cruel and Unusual Punishment Clause.

The constitutional basis for this claim under  
42 U.S.C. Section 1983 is the First Amend-  
ment -- Harassment Clause -- Retaliation  
Clause; and Eighth Amendment--cruel and  
Unusual Punishment Clause.

186. The acts of B.

SCHIEBER, Correction Officer subjected

plaintiff to undue hardships, emotional duress,



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Prolong periods of bitter cold temperatures,  
substantial risk to serious harm, self-blame,  
mental anguish, loss of mental energy, low  
self-esteem, social death, worrying, loss of  
hair, grinding of teeth, Fear, upset digestive  
tract, ashamed, powerless, insecurity, hopelessness,  
depression, loss of sleep, elevated  
levels of stress, anxiety, despair, and de-  
humanization which he cannot live a normal  
life anymore, contrary to legitimate penologi-  
cal justification, correctional goals, and

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prison policy and procedure and rules and regulation, the full extent of which cannot be measured in violation of the First Amendment and Eighth Amendment and have caused plaintiff to suffer damage in the sum of \$2,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

a) permanently enjoin the defendants, their assistants, successors, employees and

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persons acting in concert or cooperation with them further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

- b) grant compensatory damages to plaintiff in the sum of \$1,000,000;
- c) grant punitive damages to plaintiff in the sum of \$1,000,000;
- d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees,



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Exhaustion of Your Administrative Remedies  
For this Claim:

Plaintiff did grieve and appeal this claim. Grievance complaint #EL-42-42163-14 -- entitled --

HARASSED/THREATENED/LEGAL WORK READ,

dated February 4, 2014. Superintendent

denied grievance. On appeal CORC Grievant's

Request Unanimously Accepted In Part.

ALSO, this claim is not a prison condition.

NO exhaustion requirement is needed.

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## COUNT TEN

187. That plaintiff adopts by reference paragraphs 1 through 20.

188. That TIMOTHY PERRY, Correction Officer, on January 24, 2014, approximately 7:30 p.m. for his sexual gratification, again, sexually assaulted plaintiff during a needless pat frisk.

189. That here at Main Hallway -- Mess Hall Corridor plaintiff was

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en route to "Field House," which, at the magnetometer he cleared without incident, detection, alarm, and or signal.

190. That nonetheless, Plaintiff was targeted for a pat frisk by unknown white male prison guard.

191. That hereupon, TIMOTHY PERRY, Correction Officer states: "let me get this one." Meanwhile plaintiff feared for his life, safety and health.

192. That plaintiff



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Followed TIMOTHY PERRY, Correction Officer commands which was "put your hands on the wall. Step back further."

193. That TIMOTHY PERRY, Correction, with deliberate indifference repeated wanton and sadistic behavior states: "you will get with the program," in innuendo.

194. That immediately, TIMOTHY PERRY, Correction Officer began rubbing plaintiff's intimate and sexual

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body parts with both his hands including chest.

Among other Factors, rubbed and touched plaintiff's genitals and penis then rubbed and squeezed buttock for his unrentless homosexual idiosyncrasies.

195, That hereupon unfairly causing plaintiff's civil rights being infringed upon.

A violation of the United States Constitution Eighth Amendment -

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cruel and Unusual Punishment Clause.

196. That on January

28, 2014, plaintiff's primary care provider per-

formed PREA medical examine for the Jan-

uary 24, 2014 sexual assault perpetrated

by TIMOTHY PERRY, Correction Officer,

197. That thereafter,

TIMOTHY PERRY, Correction Officer on Feb-

ruary 6, 2014 approximately 3 p.m. at C-

Block, I-Company, 5-Cell called plaintiff



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"Faggot" and in so doing tormented and degraded and humiliated plaintiff.

198.

That hereupon

unfairly causing plaintiff's civil rights to be infringed upon.

A violation of the United of  
America Constitution First Amendment--

Freedom of Speech-- Harassment Clause--

Retaliation Clause; Eighth Amendment  
Verbal Harassment.

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199. That thereafter on February 8, 2014 2014, approximately 5 p.m. at plaintiff's C-Block, I-company, 5-cell location, an unnamed white male sergeant came to interview plaintiff about C.O. B. SCHIEBER.

200. That here, the Sergeant conducting the investigation refused to allow an I.G.R.C. representative to give plaintiff advice. Thus, the sergeant refused to take plaintiff complaint serious.

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The sergeant did not take any information.

The interview lasted approximately one (1) minute.

201. That plaintiff

Felt hopeless and that his life was in despair  
suffering from depression, anxiety, low self-  
esteem and humiliation.

The constitutional basis for this  
claim under 42 U.S.C. section 1983 is the

First Amendment, Freedom of Speech --

Harassment Clause -- Retaliation Clause,



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and Eighth Amendment--cruel and Unusual  
Punishment Clause

202. That the

acts of TIMOTHY PERRY, Correction Officer

Subjected plaintiff to undue hardships, sexual

assault, abuse, retaliation, emotional duress,

substantial risk to serious harm, self-blame,

mental anguish, loss of mental energy, low

self-esteem, social death, worrying, loss

of hair, grinding of teeth, fear, upset

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digestive tract, ashamed, powerless insecurity, hopelessness, depression, loss of sleep, elevated levels of stress, anxiety, despair and dehumanization which he cannot live a normal life anymore, contrary to legitimate penological justification, correction goals and Prison Policy and Procedure and Rules and Regulation, the full extent of which cannot be measured in violation of the First Amendment-- Freedom of speech clause - Harassment clause - Retaliation clause, and

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Eighth Amendment cruel and unusual Punishment Clause and have caused plaintiff to suffer in the sum of \$2,500,000.

WHEREFORE, plaintiff respectfully

Fully prays this Court to:

a) permanently enjoin the defendants their assistants, successors, employees, and persons acting in concert or cooperation

with them further violating the rights, privileges and immunities guaranteed to



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the plaintiff under the Constitution of the United States of America;

b) grant compensatory damages to plaintiff in the sum of \$1,000,000;

c) grant punitive damages to plaintiff in the sum of \$1,000,000;

d) grant plaintiff plaintiff's cost of this action, including reasonable attorney fees.

Exhaustion of Your Administrative Remedies  
For this Claim:

Plaintiff did not grieve and appeal this claim.

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Also, this claim is not a prison condition. NO exhaustion requirement is needed.

## COUNT ELEVEN

203. That plaintiff

adopts by reference paragraphs 1 through 20.

204. That B. SCHIEBER,

Correction Officer, on February 10, 2014 approx-

imately 3:30 p.m. came to plaintiff's C-Block,

1-company, cell-5 for his sexual gratification

as a sexual predator and made sexual

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advancement toward plaintiff in homosexual idiosyncrasies using both his hands

205. That shortly thereafter, B. SCHIEBER, correction officer, returning, repeatedly for his sexual gratification made sexual advancement toward plaintiff. Blows a kiss into his cell.

206. That soon later, while plaintiff was exiting mess Hall, C.O. B. SCHIEBER still repeatedly for his sexual gratification and unrelentless wanton



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and Sadistic behavior call plaintiff "Faggot!"

207. That plaintiff felt ashamed, humiliated, degraded and hopeless knowing that his life is in despair, among other things.

208. That B. SCHIEBER, Correction Officer, on February 11, 2014 approximately 4:30 p.m. made serious threats at plaintiff at plaintiff's C-Block, 1 company, 5-cell.

209. That here, B.

Page 129

SCHIEBER, Correction Officer with deliberate indifference states: "Come out your cell to get your ass whipping!"

210. That plaintiff feels his life, health, and safety was in jeopardy. His life is perilously in despair!

211. That the next day. 13. SCHIEBER, Correction Officers, on February 12, 2014 made serious threats at plaintiff's C-Block, 1 company, 5-cell, approx. 4:30 p.m.

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212. That here, B.

SCHIEBER, correction officer with deliberate indifference began threats with wanton malicious behavior when he states: "hey girl, what are you working on? Don't hide in your cell! Come out tomorrow to get your ass whipping! You're always bitching and writing grievances!"

213. That plaintiff

Felt his life was in jeopardy, hopeless, emotional duress, and in despair!



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214. That unfairly  
causing plaintiff's civil rights being infringed  
upon.

A violation of the United States  
of America Constitution First Amendment --  
Freedom of speech -- Retaliation Clause.

215. That the The  
Correctional Association of New York - Prison  
visiting Project (hereinafter CA) visited  
Elmira Corr. Fac. in March 2010 to assess

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the programs, physical facilities, and conditions for both staff and inmates within the prison, among other things.

216. That the CA

Report on page 13 states: "The response rate for incidents of sexual abuse places Elmira in the top third of all CA-surveyed prisons for frequency of sexual abuse, signifying that the inmates perceive more abuse at Elmira than at other prisons we have visited."<sup>10</sup>

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217.

That preceding

Foot note #10 states: "In an August 2010 report sexual victimization in prisons and Jails Reported by Inmates, 2008-09, the U.S. Department of Justice Bureau of Statistics ranked Elmira with the third highest rate of staff sexual misconduct in all 167 surveyed male prisons in the U. S.

218.

That Furthermore,

"Fifty-eight percent of survey respondents reported experiencing an abusive pat frisk



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at least once. Similar to the average at all CA-visited Facilities. We suggest that Facility administrators examine this high rate of sexual abuse between staff and inmates to determine its root cause and explore methods of prevention." A striking point for plaintiff. See Exhibit A.

The constitutional basis for this claim under 42 U.S.C. section 1983 is the First Amendment and Fourteenth

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Amendments -- Freedom of Speech - Retaliation  
clause -- Cruel And Unusual Punishment Clause -  
Equal Protection Clause -- Failure to protect  
and Failure to Supervise.

2/9. That the acts of  
the defendants, and each of them, subjected  
plaintiff to undue hardships, substantial risk  
to serious harm, loss of mental energy, low  
self-esteem, social death, worrying, loss of  
hair, grinding of teeth, Fear, anxiety, high,  
level of stress, headaches, hopelessness, humili-

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liation, upset digestive tract, powerless insecurities, depression, nightmares, loss of sleep, despair and dehumanization of repeated sexual assaults, sexual abuses, sexual harassments, retaliations, intimidations and threats, hemorrhoids, anal itching, discomfort, and permanently psychologically scarred, which he cannot live a normal life anymore, contrary to legitimate penological justification, correction goals and prison policy and procedure and rules and regulation the full extent of which con-



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not be measured in violation of the First Amendment, Eighth Amendment, Fourteenth Amendment, Due Process clause And Equal Protection clause -- Failure to Protect and Failure to supervise and have cause plaintiff to suffer damages in the sum of \$5,000,000.

WHEREFORE, plaintiff respectfully prays this Court to:

- a) permanently enjoin the defendants their assistants, successors, employees and persons

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acting in concert or cooperation with them

Further violating the rights, privileges and the Constitution OF the United States OF America;

b) grant compensatory damages to plaintiff in the sum OF \$2,000,000;

c) grant punitive damages to plaintiff in the sum OF \$2,000,000;

d) grant plaintiff plaintiff's cost OF this action, including reasonable attorney fees.

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Exhaustion of Your Administrative Remedies For  
This Claim:

Plaintiff did grieve and appeal this claim. Grie-

vance Complaint Number EL-42205-14 Entitled--

DISCRIMINATING SLURS/ACTIONS Dated

February 10, 2014

Superintendent denied the grievance. On appeal

CORC Grievant's Request Unanimously Accepted In Part

~~Also~~ this claim is not a Prison condition. NO  
exhaustion requirement is needed.

Dated: June 19, 2019

Respectfully submitted,

Darrell Gunn

Darrell Gunn, 03-B-2443  
Plaintiff, Pro Se